IT 00-0024-GIL 03/13/2000 PUBLIC LAW 86-272/NEXUS

General Information Letter: The Department cannot rule that a taxpayer has no nexus with Illinois.

March 13, 2000

Dear:

This is in response to your letter dated February 14, 2000 in which you request a Letter Ruling. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling, the nature of your question and the information provided require that we respond only with a GIL.

In your letter you stated:

> I would appreciate information from your department of revenue in regards to whether my client has nexus for income/franchise tax purposes.
>
> My client is a corporation which provides design services to, and builds customer-designed equipment for, manufacturers. As an example, the taxpayer may give advice on how the manufacturer can better operate a production line or produce a product. The taxpayer's employees sometimes visit the customer's plant in connection with their services.
>
> The only contacts the taxpayer has with your state are the occasional employee visits. They are not on a routine or regular schedule. Rather, they occur only as necessitated by the project. The number of visits by the taxpayer's employees in your state would average about 20-25 times per year. There are no other physical contacts for purposes of nexus with your state. For example, the taxpayer has no inventory or other property in the state. The taxpayer does not deliver products into your state. There is no intangible personal property involved with the work.
>
> My question is whether you believe this level of activity constitutes nexus for purposes of having to register for corporate income/franchise tax recording purposes. In addition to a written response, I would certainly appreciate if you would include a copy of whatever legal authority you would base your decision on.
>
> Since all of the customers will qualify for an exemption from your state's sales and use tax, and the taxpayer does collect signed

exemption certificates, it is not necessary for you to address any sales and use tax aspects.

DISCUSSION

In answer to your letter, it is not within the scope of a general information letter to determine whether a taxpayer has nexus with the state of Illinois. Such a determination can only be made in the context of an audit wherein the auditor would have full access to all pertinent information. Rather, a general information letter is appropriate for discussing general aspects of Illinois law. Accordingly, I can provide you with a general discussion of the law in Illinois.

Illinois law determines "doing business" as the prevailing principles of jurisprudence under the commerce and due process clauses of the US Constitution. The leading case in the area is *Quill v. North Dakota*, 112 S.Ct. 1904 (1992), which found that a state could not tax a business whose only activity within a state is by mail order. Some physical presence is necessary and a taxpayer must purposefully avail itself of an economic market before a state could exert jurisdiction over a taxpayer for taxing purposes. However, subject to the limits of *Quill* and PL 86-272 a state is allowed to tax someone if it so chooses. The providing of services does not qualify for protection under PL 86-272. But, occasional visits to the state would probably satisfy the commerce and due process clauses. In the New York case of *Orvis v. Tax Appeals Tribunal*, 86 N.Y.2d 165, 654 N.E.2d 954 (1995), the court found that four visits to nineteen customers in one year was enough to allow the state to tax a Vermont wholesaler.

As mentioned above, this is merely a general information letter and not a statement of policy and is not binding upon the Department. I hope that this has been helpful to you. If you have additional questions please feel free to contact me at the above address.

Very Truly Yours,

Charles Matoesian
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